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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,507	12/10/2001	H. Ward Silver	PHYS118084	9101
7590	12/28/2004		EXAMINER	
Steven J. Shumaker SHUMAKER & SIEFFERT, P.A. 8245 Seasons Parkway Suite 105 St. Paul, MN 55125			LAYNO, CARL HERNANDZ	
			ART UNIT	PAPER NUMBER
			3762	
			DATE MAILED: 12/28/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/016,507	SILVER ET AL.
	Examiner <i>Carl H. Layno</i> Carl H. Layno 12/16/04	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 October 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4-18,20-26,28-42 and 44-64 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 8,14-18,20-26,28-42,44-58 and 62-64 is/are allowed.
 6) Claim(s) 1,2,5 and 13 is/are rejected.
 7) Claim(s) 4,6,7,9-12 and 59-61 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 10 December 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

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DETAILED ACTION

1. Acknowledgement is made of applicant's amendment, which was received by the Office on October 29, 2004.
2. Claims 3, 19, 27, and 43 are canceled. Claims 1, 2, 4-18, 20-26, 28-42, and 44-64 are active.

Claim Objections

3. Claim 44 is objected to because of the following informalities:
 - As written, claim 44 depends upon canceled claim 43. To overcome this objection, the Examiner recommends changing the claim dependency of claim 44 to depend from claim 42 instead.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. Upon further reconsideration of applicant's arguments, the Examiner is withdrawing the 35 U.S.C 102(b) rejection of Faisandier '473 (Applicant's prior art), which was made against claims 1, 2, 4-6, 9, and 10 in the last Office action.
5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e))

7. Claims 1, 2, 5, and 13 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Joao '761.

The Joao '761 patent describes an apparatus and method for processing healthcare information including a medical computer (Fig.2) inherently equipped with an operating system of a particular version and a software agent (col.40, lines 14-16). The software agent can perform any “processing functions and/or other functions described herein [in the patent]”. One of the functions of the device is to permit access over a network to medical information residing in the database **104** of the medical computer (Fig.2). The database uses any number of relational database techniques (col.7, lines 48-61) including object links (OLE's) (co.7, line 60-61) for retrieving medical information. To have arranged these objects in directories or look up tables

would have been obvious if not inherent since this practice is common in the art of object oriented relational databases. No statement is made in the Joao patent that would inhibit the software agent from interacting with other/different versions of the computer's operating system. In addition, the applicant's claim language does not specify what kind of software it was which was installed on the medical device. If the "version of software" installed on the medical computer is simply an I/O driver (e.g. a display driver or a driver of a peripheral device), the installation of different versions of this would probably not affect operations of the software agent, which essentially performs like a separate subroutine responsible for moving medical data across a network through a different I/O port.

Allowable Subject Matter

8. Claims 4, 6, 7, 9-12, and 59-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 8, 14-18, 20-26, 28-42, 44-58, and 62-64 are allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The van Oostrom et al '345 and Lebel et al '546 patents describe systems in which medical devices are capable of communicating with other medical devices having different

communications protocols. These devices, unlike applicant's device, however, fail to recite the presence of software within the medical device capable of performing the functions of applicant's claimed "software agent".

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed correspondence should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

Carl H. Layno

CARL LAYNO
PRIMARY EXAMINER

CHL
12/16/2004

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